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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 David Getzen, ) CV 21-00558-TUC-CKJ (LAB)  
10 Petitioner, ) **ORDER**  
11 vs. )  
12 David Shinn; et al., )  
13 Respondents. )  
14

15 Pending before the court is the petitioner's motion to extend time for discovery filed on  
16 June 27, 2022. (Doc. 21) The respondents filed a response on July 7, 2022. (Doc. 22) Getzen  
17 did not file a timely reply.

18 Previously, on December 18, 2021, Getzen filed a petition in this court for writ of habeas  
19 corpus pursuant to 28 U.S.C. § 2254. (Doc. 1) He filed an amended petition on March 14,  
20 2022. (Doc. 7) Getzen was convicted of two counts of impersonating a police officer in  
21 Yavapai County Superior Court. (Doc. 20, p. 1); (Doc. 20-1, p. 10) He claims in his amended  
22 petition that (1) his cell phone records prove he is innocent, (2) Officer Jarmillo never filed a  
23 police report violating his 14<sup>th</sup> amendment rights, (3) he was not allowed to use his cell phone  
24 as evidence in his favor, and (4) his attorney was ineffective. *Id.* On May 31, 2022, the  
25 respondents filed an answer. (Doc. 20) They argue that "claims 1, 2, and 3 are non-cognizable  
26 and waived [because Getzen pleaded guilty], and all four of Getzen's claims are procedurally  
27 defaulted." *Id.*  
28

1 In the pending motion, Getzen moves that this court “extend time for discovery” citing  
 2 “*Arizona v. Willis* 1964” (Doc. 21) He provides no further argument aside from this citation.  
 3 *Id.* The court presumes that Getzen is referring to *State of Arizona v. Willits*, 96 Ariz. 184, 393  
 4 P.2d 274 (1964). *Willits* stands for the proposition that, under certain circumstances, the trial  
 5 court is required to instruct the jury that if the state “destroyed any evidence whose contents or  
 6 quality are in issue, you may infer that the true fact is against their interest.” *Willits* at 187, 276.  
 7 The court notes that *Willits* has limited applicability to this case where the petitioner pleaded  
 8 guilty and there was no trial. *See* (Doc. 20, p. 1); (Doc. 20-1, p. 10)

#### 9 10 Discussion

11 Unlike a party to a normal civil action, a habeas petitioner “is not entitled to discovery  
 12 as a matter of ordinary course.” *Bracy v. Gramley*, 520 U.S. 899, 904, 117 S.Ct. 1793, 1796-97  
 13 (1997). Rule 6(a) of the Rules Governing § 2254 Cases permits discovery “only in the  
 14 discretion of the court and for good cause shown.” *Rich v. Calderon*, 187 F.3d 1064, 1068 (9<sup>th</sup>  
 15 Cir.1999), *cert. denied*, 528 U.S. 1092. Rule 6(b) further provides that “[a] party requesting  
 16 discovery must provide reasons for the request.”

17 Moreover, the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)  
 18 “restricts the ability of a federal habeas court to develop and consider new evidence.” *Shoop*  
 19 *v. Twyford*, 142 S. Ct. 2037, 2043–44 (2022). “Review of factual determinations under [28  
 20 U.S.C.] § 2254(d)(2) is expressly limited to the evidence presented in the State court  
 21 proceeding.” *Id.* (punctuation modified). “And in *Cullen v. Pinholster*, 563 U.S. 170, 131 S.Ct.  
 22 1388, 179 L.Ed.2d 557 (2011), [the Supreme Court] explained that review of legal claims under  
 23 § 2254(d)(1) is also limited to the record that was before the state court.” *Id.* “This ensures that  
 24 the state trial on the merits is the main event, so to speak, rather than a tryout on the road for  
 25 what will later be the determinative federal habeas hearing.” *Id.*

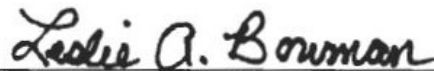
26 “If a prisoner failed to develop the factual basis of a claim in State court proceedings, a  
 27 federal court may admit new evidence, but only in two quite limited situations.” *Id.* “Either the  
 28 claim must rely on a new and previously unavailable rule of constitutional law made

1 retroactively applicable by [the Supreme Court], or it must rely on a factual predicate that could  
2 not have been previously discovered through the exercise of due diligence.” *Id.* “And even if  
3 a prisoner can satisfy one of those two exceptions, he must also show that the desired evidence  
4 would demonstrate, by clear and convincing evidence, that no reasonable factfinder would have  
5 convicted him of the charged crime.” *Id.*

6 In this case, Getzen has failed to show good cause in support of his motion to extend time  
7 for discovery. (Doc. 21) Getzen does not allege that he is relying on a “new and previously  
8 unavailable rule of constitutional law.” *Shoop v. Twyford*, 142 S. Ct. 2037, 2044 (2022); (Doc.  
9 21). Neither does he allege that his petition relies on “a factual predicate that could not have  
10 been previously discovered through the exercise of due diligence.” *Id.* Aside from his  
11 reference to *Willits*, Getzen provides no argument as to what evidence he seeks or how it would  
12 be relevant to his convictions. (Doc. 21); *see* Rule 6(b) of the Rules Governing § 2254 Cases.

13  
14 IT IS ORDERED that the petitioner’s motion to extend time for discovery filed on June  
15 27, 2022 is DENIED. (Doc. 21) Getzen’s deadline for filing a reply brief in support of his  
16 petition is extended to September 15, 2022.

17 DATED this 11<sup>th</sup> day of August, 2022.

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21 Leslie A. Bowman  
22 United States Magistrate Judge  
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